



United States  
Department of  
Agriculture

Forest  
Service

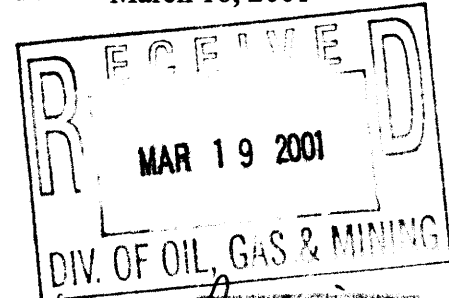
Manti-La Sal  
National Forest

Supervisor's Office  
599 West Price River Drive  
Price, UT 84501  
Phone: (435) 637-2817  
Fax: (435) 637-4940

File Code: 2820-4

Date: March 16, 2001

Energy West Mining Company  
Attn: Dennis Oakley, Environmental Engineer  
P.O. Box 310  
Huntington, UT 84528



Dear Mr. Oakley:

*Copy Mary Ann,  
Daron, Pam, Susan  
Fax PFO (Pete)*

I have received your letter of March 15, 2001 requesting a "variance" from the Forest Service policy regarding disposal of asphalt for reclamation operations on the Des Bee Dove Mine. I appreciate your concern regarding the need to now dispose of asphalt that has been pushed from the bathhouse pad cut area and which was planned to be used as initial fill material. I believe there is a misunderstanding on your part of the basis of the policy and of any authority which I would have in approving a variance.

The "Regulations and Policies Related to Disposal of Asphalt, Manti-La Sal National Forest, May 2000" document to which you refer serves two functions. First, it compiles information on State and Federal laws applicable to disposal of asphalt. Second, it asserts a Forest Service policy to not allow solid waste disposal on National Forest System lands unless it is determined to be the "highest and best use of the lands". Laws referred to include citations from the Utah Code Annotated, Utah Administrative Code, Federal Executive Order, and Code of Federal Regulations. In addition to the statutes referred to in the regulations and policy document, the Resource Conservation and Recovery Act (RCRA) 42 U.S.C. Sec. 6901 et. seq. addresses discarded material (including those from mining operations). Under this statute, the asphalt in question would also be considered a solid waste.

The direction of law is that used asphalt is a solid waste and therefore, must be disposed of in an approved solid waste landfill. Regardless of Forest Service desires in regard to these issues, I do not have any authority to approve variance from compliance with these laws. The enforcement agencies for these regulations are the U. S. Environmental Protection Agency and the Utah Department of Environmental Quality, Division of Solid and Hazardous Waste. As such, the Forest Service cannot force compliance but also cannot grant variance from these requirements.

I am aware that the reclamation plan for the Des Bee Dove Mine calls for burial of used concrete and asphalt material on the leased area. Unfortunately, as summarized above, burial of the asphalt is not allowed by law. Certainly, statutory requirements would have primacy over the reclamation plan and Energy West is responsible for compliance with all applicable laws related to your operations, including reclamation. This responsibility is specified in Section 14 of your Federal Coal Leases and Term and Condition A under Section III, Responsibilities of the Holder, in your Special Use Permit authorizing use of the portal area for the mine. Condition A



specifically mentions RCRA as well as all applicable Federal, State, and local laws, regulations, and standards. Energy West signed the current, renewed special use permit on March 2, 2001. Authorization previous to this renewed permit for use of the portal area was under a special use permit approved on February 10, 1977. This permit also had a similar clause, item 7, calling for compliance with all applicable Federal, State, county, and municipal laws, ordinances, or regulations. Both permits also included clauses requiring removal of structures and improvements with cost to be borne by the permittee.

We believe it would be an appropriate use of the used asphalt to grind it up and have it spread on roads in the area. You may find this option more desirable than disposal of the material in an approved solid waste landfill. If you wish to pursue this option, please contact Aaron Howe of this office for assistance in identifying appropriate Forest Roads and/or coordination with the County for possible use on County Roads.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elaine J. Zieroth".

ELAINE J. ZIEROTH  
Forest Supervisor

cc: Mary Ann Wright, Utah Division of Oil, Gas and Mining